

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Applications by Qwest Communications,)	CC Docket No. 02-148
International, Inc., <i>et al.</i>)	
for Authorization to Provide In-Region,)	
InterLATA Services in Colorado, Idaho, Iowa)	
Nebraska and North Dakota)	

REPLY COMMENTS OF COVAD COMMUNICATIONS COMPANY

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INTRODUCTION

These are Qwest's first applications for section 271 in-region, inter-LATA authorization. The standards to which Qwest's current applications are held thus bear serious repercussions for the entire Qwest service region. If the Commission does not hold Qwest's current applications to the high standards the Act requires, these applications hold the potential to close local markets to competition throughout Qwest's service territories. Thus, the Commission must not take these applications, and their concomitant dangers, lightly. The Commission must take every pain to ensure that these applications meet the strict requirements of section 271.

As discussed in detail below, Qwest has failed to meet its required burden in several critical areas:

1. loop pricing;
2. loop makeup information and loop provisioning;
3. human error in OSS processes; and
4. new build/held order policy.

Until these issues are resolved, Qwest's applications cannot be granted.

COMMENTS

A. Qwest's Recurring Rate For The HFPL Is A Clear Violation of TELRIC.

In its Opening Comments, Covad conclusively demonstrated that Qwest's HFPL rate is a clear violation of TELRIC. In summary, Qwest (1) has not applied the pricing proscription mandated by the FCC in the *Line Sharing Order* for the pricing of the HFPL; (2) violates the non-discrimination requirements mandated by the Act by charging CLECs for costs it does not attribute to itself when it provisions the HFPL in order to

provide service to its own retail customers; (3) failed to prove that it sustains any costs, much less TELRIC-compliant costs, through production of a TELRIC-compliant cost study, even though such a study is required by the FCC's pricing rules; and (4) seeks the imposition of a market-based and market-driven rate rather than a cost-based rate as required in the Act.¹ Qwest's pricing for the HFPL in Colorado fails to satisfy the requirements of TELRIC, and therefore section 271.²

At this point, there is no doubt that all of Qwest's UNE rates must be cost-based, and in conformance with TELRIC and the Commission's pricing rules. As the Supreme Court made indisputably clear just two months ago, TELRIC is the appropriate methodology for the UNE rates a BOC charges to competitors.³ As section 271 of the Act further makes clear, a BOC must demonstrate that its UNE rates are TELRIC-compliant in order to obtain the authorizations for in-region interLATA services that Qwest seeks here. Consequently, each and every one of Qwest's UNE rates in this proceeding must comply with TELRIC and thus be shown to be cost-based. Qwest has not made that requisite showing here. In fact, the rates for UNE HFPL Qwest charges

¹ Comments of Covad Communications Company, dated July 3, 2002, pp. 5-13.

² The Colorado Commission states that the *USTA* decision obviates the HFPL pricing issue. COPUC Reply, p. 30, n. 60. Such an assumption is both premature and presumptuous since access to the line shared loop UNE is part of the Commission's decision-making in the Triennial Review and the status quo will remain until the FCC renders its decision. Second, the assumption that the rules requiring access to the line shared loop UNE have been vacated is erroneous, as a matter of law, since no mandate has yet issued from the D.C. Circuit. Third, Qwest's obligations under federal law are frozen as of the time Qwest filed its application with the FCC. Thus, Qwest is obligated to provide access to line shared loop UNEs and to be judged on its performance in doing so, a fact that the COPUC already explicitly recognized. See CO Trans., 6/13/02 (Gifford & Jennings-Fader), pp. 19-20.

³ Verizon, Inc. v. FCC, 535 U.S. ___, Slip Op. (May 2002).

competitors in Colorado clearly violate the Commission's TELRIC pricing rules, as clarified in the *Line Sharing Order*.

In the underlying cost proceeding, the Colorado Commission deliberately, unequivocally and explicitly flouted the requirement that Qwest's HFPL recurring rate be TELRIC compliant, stating that it is "it is ***non-sensical*** to try and speak of HFPL pricing in terms of being TELRIC-compliant."⁴ Standing alone, it is clear that Qwest's HFPL rate is not TELRIC-compliant and cannot be approved unless and until the HFPL rate is set at zero.

The Colorado Commission's decision to exceed its authority and, in fact, to actively perpetrate a violation of the FCC's pricing rules, is not an excuse for Qwest's failure to satisfy the requirements of TELRIC.⁵ It is the independent, yet binding, obligation of both this Commission and Qwest to respectively approve and charge TELRIC-compliant rates. Unless and until the HFPL is set to zero, the HFPL rate is not TELRIC-compliant. Thus, approval and application by the Commission and Qwest respectively of a positive rate for the HFPL is and will constitute a clear violation of TELRIC and therefore Section 271.

Qwest insinuates in its *ex parte* that the Commission should disregard the positive rate for the HFPL on the basis that the *Line Sharing Order* does not require a zero rate. This argument is an extraordinary red herring. The Commission, Qwest and Covad all know that the HFPL rate is not TELRIC-compliant, as fully evidenced by the Colorado

⁴ CO PUC Docket No. 99A-577T, Order No. C02-636, p. 17 n.9.. The COPUC continues in its unlawful intransigence on the HFPL pricing issue. *See* COPUC Reply, pp. 30-31 (again ignoring the fact that its rationale for a positive HFPL is contrary to TELRIC).

⁵ On July 26, 2002, Covad filed its Third Petition for Rehearing, Reargument or Reconsideration on the HFPL recurring rate issue. In that Petition, Covad pointed out that the Colorado Public Utilities Commission did not have the authority to reject the voluntary rate proposed by Qwest.

Commission's statement, no matter what Qwest argues about the *Line Sharing Order*. Further, setting aside the *Line Sharing Order*'s directives regarding the pricing of the HFPL⁶, Qwest simply cannot get around the fact that the HFPL rate it plans to charge CLECs in Colorado results in clear discrimination against its only competitor in the ADSL space (which is the only type of DSL service Qwest currently provides).

The touchstone of the Act is non-discrimination.⁷ That is, the Act requires, at a minimum, that Qwest extend the same rates, terms and conditions for UNEs to its wholesale competitors as it does for itself. Because Qwest disclosed that it attributes *no* costs to the HFPL in its own federal retail DSL tariff filings, which fact it also admitted during the hearing in the Colorado cost case,⁸ it cannot charge CLECs anything for the HFPL. Thus, to permit Qwest to charge anything, when it attributes no costs to itself, will result definitively in discrimination by Qwest against CLECs.

Equally important is the absence of any cost study to support a positive rate for the HFPL. As an evidentiary matter, an ILEC can only prove that its rates are cost-based if they are supported by a cost study.⁹ Here, Qwest never produced any cost study for any HFPL recurring rate.¹⁰ The absence of a cost study speaks volumes. If Qwest

⁶ Covad fundamentally disagrees with Qwest's interpretation of the *Line Sharing Order*. As the Commission made clear in Docket No. 00-193 (May 31, 2000), the requirement that ILECs charge CLECs no more for the HFPL than the ILECs attribute to the HFPL in their federal retail DSL tariffs is mandatory, not suggestive. *See* ¶ 98.

⁷ 47 U.S.C. § 251(c)(2) and 271 (B).

⁸ CO Cost Hearing Trans., 8/13/01, pp. 190:15-19; 191:20-24, 225:14-25, 226:1-2; CO Cost Hearing Exhibit FF, p.p. 34, 45-46.

⁹ 47 C.F.R. 51.505.

¹⁰ Covad continues to vigorously dispute the contention that the \$4.89 rate is a negotiated rate. First, Covad accounts for almost 100% of the volume of line shared orders in Colorado and it never negotiated or agreed to any permanent rate that was more than \$0. Second, even if there were any entity with whom Qwest negotiated and actually agreed to the \$4.89 rate, certainly Qwest would have said so. That Qwest cannot

actually incurred costs, it certainly would have been able to develop and provide a cost study. That Qwest did not only reinforces the fact that Qwest incurs no costs in provisioning the HFPL to CLECs. Thus, even setting aside the *Line Sharing Order*, Qwest has failed to meet the evidentiary burden established by the Commission for ILECs wishing to prove that their rates are TELRIC-compliant

Equally fatal to Qwest's desire to charge a positive HFPL are the problems associated with double recovery. While Qwest has indicated in its July 24, 2002 *ex parte* that it will deaverage the HFPL rates, the continued desire to charge a positive rate for the HFPL is not accompanied by any commitment to rebalance loop rates. In the absence of rebalancing, as the Department of Justice acknowledged in its Comments, Qwest will over-recover the cost it incurs in provisioning stand alone and line shared loops. That is, Qwest will recover more than its costs, in violation of TELRIC, since it already recovers all of its loop costs from stand alone loops and then will receive additional income from the HFPL rates. The Commission should not permit Qwest to double recover, at the expense of CLECs and, more importantly, consumers.¹¹

Qwest apparently has suggested that the Commission should ignore its failure to produce a cost study because its HFPL study would look just like a loop cost study. While, as a theoretical matter, a cost study for HFPL might include costs also developed

gin up a single CLEC that agreed to a \$4.89 speaks volumes to the fact that the \$4.89 was not negotiated but rather is just a Qwest proposed rate. Third, even if the rate was deemed a negotiated rate (which it is not), Covad cannot be bound by a negotiated rate to which it did not consent. Finally, and most importantly, a negotiated rate does not satisfy the requirement that Qwest's rates be cost-based since negotiated rates need not be cost-based. *See* 47 U.S.C. 252(a)(1).

¹¹ In its April 2002 Order No. C02-409 in Docket No. 99A-577T, the Colorado Commission refused to even require Qwest to rebalance loop rates, much less set any schedule for such rebalancing. Order No. C02-409, pp. 87-88.

as part of a loop cost study,¹² this argument entirely fails to address the pricing principles for HFPL established in the *Line Sharing Order*. In order for Qwest to receive 271 authorization, each of Qwest's UNE rates must demonstrably comply with TELRIC, including the mandatory pricing principles established in the *Line Sharing Order*. Qwest has not provided such a showing here. More importantly, this argument smacks of a belated attempt to justify a litigation strategy that now is causing Qwest a problem. As Covad stated in its Opening Comments, part of the problem with Qwest's assertion that it incurs any costs in provisioning the HFPL is the fact that its proposed rate for the HFPL constantly changes, depending on what appears to be politically palatable. For instance, in Minnesota, Qwest advocated a HFPL rate of 50% of the unbundled loop rate.¹³ When that ploy proved unsuccessful, Qwest adopted a new tactic, advocating in Washington that the HFPL rate should be up to 50% of the unbundled loop rate, capped at \$10.¹⁴ Then, in Colorado, Qwest proposed a \$5.00 rate, but happily accepted the \$4.89 rate. That there is no cost basis for its HFPL rate was admitted by Qwest in the Colorado cost hearing. In fact, Qwest witness Fitzsimmons testified that the appropriate price could be anywhere from "\$1 to the entire cost of the loop."¹⁵ Likewise, Qwest witness McDaniel testified that:

¹² Covad doubts the sincerity of this statement. If the cost study underlying the HFPL looked just like the cost study for loops, then there is no doubt that a positive HFPL would result in over-recovery by Qwest. Simply put, a loop cost study that includes the HFPL would make adjustments for rate rebalancing. Qwest's Loop Mod (which is its loop cost study), however, makes no adjustment for cost recovery contribution by the HFPL.

¹³ CO Cost Covad Brief Exhibit 1 (*MN Line Sharing Order*), ¶ 28.

¹⁴ CO Cost Hearing Ex. AA (Direct Testimony of Rex Knowles), Ex. 1, ¶ 26.

¹⁵ CO Cost Hearing Trans., 8/13/01 (Fitzsimmons), p. 208:15-19.

Q: Would you agree that the reasonable portion of the cost that could be allocated, could be \$1, \$5, \$50, depending upon what the cost of the loop is?

A: Allocation always involves judgment. And we try to use judgment based on some of the negotiations we have had with CLECs, some of the other -- we're trying to find out what the market price should be. And as I said in my testimony, we could adjust that over time; but we did that based on some of our experience we had.¹⁶

Qwest proposed and the Colorado Commission approved a purportedly "reasonable" price,¹⁷ but its economist agreed that Qwest has no knowledge or idea as to what the correct rate for the HFPL is.¹⁸ Under Qwest's approach, therefore, there is no empirical or even anecdotal data upon which the Commission may rely in establishing the HFPL rate; rather, Qwest picked a "market-based" number that it likes, but cannot support.

At this juncture, it is important for the Commission to place this particular rate issue in context. For example, Verizon, which likewise discloses no costs in provisioning the HFPL has voluntarily proposed a \$0 rate for the HFPL. Similarly, SBC, which also discloses no costs for its retail DSL product, has a \$0 HFPL rate in Illinois, Kansas, Michigan and Texas. Even more critical is the fact that Qwest voluntarily agreed to a \$0 rate (which the Colorado Commission improperly and illegally rejected) in recognition of the fact that its HFPL rate had to be \$0 in order to be TELRIC compliant.

Qwest's pricing of the HFPL in Colorado represents a clear violation of TELRIC. Consequently, its HFPL rate likewise constitutes a violation of Section 271. Qwest's

¹⁶ CO Cost Hearing Trans., 8/10/01 (McDaniel), p. 232:1-5.

¹⁷ CO Cost Hearing Ex. P (McDaniel Direct), pp.15-16.

¹⁸ CO Cost Hearing Trans., 8/13/01 (Fitzsimmons), p. 206:14-18.

application for Section 271 relief in Colorado must be rejected until it sets the HFPL at \$0.

B. Qwest Fails to Provide Parity Access to Loop Makeup Information

As discussed in Covad's Comments, Qwest's applications exhibit manifold deficiencies in the area of loop qualification information. KPMG's testing of Qwest's provision of loop makeup information only examined whether CLECs were provided with the same information available to Qwest's retail ordering personnel.¹⁹ As stated by the Commission on several occasions, the relevant inquiry is not whether such information is available merely to the incumbent's retail personnel. Rather, the relevant inquiry is whether such information exists anywhere in the incumbent's back office and can be accessed by any of the incumbent's personnel, regardless of whether they are retail or back-office personnel.²⁰ Thus, KPMG's testing of loop makeup information fails

¹⁹ In its Reply Comments, the Colorado Commission suggests that Covad never stated that the KPMG test was insufficiently broad. Reply Comments of the Colorado Public Utilities Commission, dated July 29, 2002, p. 20, n. 37. That is not accurate. Covad made clear at the OSS hearings that it was of the opinion that Test 12.7 did not establish whether Qwest met its legal requirements:

I think [with respect to Test 12.7] the test criteria were established with an idea of parity as between retail ordering and then what CLECs on the wholesale side get to see when they are trying to prequalify orders on their side.

I think in that respect the test fell short because I think the FCC has said – and its one of the Verizon orders – recent Verizon orders ... [in which the FCC stated] that the relevant inquiry for 271 isn't what just those retail ordering people are looking at, it is what information is available to the BOC with regard to loop makeup that may exist anywhere in its back-end databases or engineering records and things that may not be necessarily utilized by the retail ordering personnel but are available to the BOC generally should it so seek it.

. CO Trans., 6/11/02 (Doberneck), pp. 203-204.

²⁰ See *UNE Remand Order*, 15 FCC Rcd 3696, 3885, paras. 427-431; *SWBT Kansas/Oklahoma 271 Order* at paras. 121-29; *Verizon MA 271 Order* at para. 54.

by its very terms, and leaves Qwest lacking the requisite showing for its 271 applications.²¹

The Commission's previous precedent makes amply clear the standard to which Qwest's provision of loop makeup information must adhere. Specifically, in the *Verizon MA 271 Order*, the Commission stated, "The relevant inquiry as required by the *UNE Remand Order* is not whether Verizon's retail arm or advanced services affiliate has access to such underlying information but whether such information exists anywhere in Verizon's back office and can be accessed by any of Verizon's personnel."²² In that order, the Commission also reaffirmed its long-standing precedent that "The BOC at all times bears the burden of proof of compliance with section 271."²³ It was precisely because Verizon could not meet its burden of proof of showing non-discriminatory access to loop makeup information that Verizon withdrew its first Massachusetts 271 application, and subsequently refiled after creating a pre-order process for access to its LFACS database.²⁴ Verizon's first, failed attempt at 271 entry in Massachusetts ran afoul of the same requirement that KPMG's testing ignores and that Qwest's application seeks to sidestep here: that the BOC prove it provides competitors access to loop makeup information under the standard established by the *UNE Remand Order*, namely in the same time and manner it is available to any of its own personnel.

Qwest's *ex parte* submission attempts to get around this fundamental defect in Qwest's 271 showing by providing information about purported improvements in its pre-

²¹ See Covad Comments at 14-15.

²² See *Verizon MA 271 Order* at para. 54 (citing *UNE Remand Order* at 3886, para. 430).

²³ See *id.* at para. 11.

²⁴ See *id.* at para. 57.

qualification tools and the underlying loop qualification database.²⁵ The Commission must not allow these submissions to divert its attention from the fundamental defects in Qwest's showing they fail to address.

Qwest has put forth simply no evidence to demonstrate that competitors receive access to all of the loop makeup information available to Qwest's personnel in the same time and manner. In fact, what CLECs know is that Qwest conducted bulk MLT tests to populate loop length information in its RLDT loop qual information database. What CLECs know is that the MLT test captures over one hundred data points,²⁶ while Qwest's database purports to provide only MLT loop lengths. What CLECs also know is that Qwest runs the MLT every month, but updates only the MLT distance rather than updating all loop makeup information.²⁷ In fact, as Qwest stated in its *ex parte*,

When the Loop Qualification database was initially loaded with loop information from LFACS, some of the loops *did not contain loop length*, showing missing segments. As a result, Qwest (then US WEST) performed some MLT tests to *extract MLT distance data*, and together with other distance database record information, obtained the estimated loop length for the missing segments and algorithmically *populated the appropriate data for those segments distances* for which it applied in the loop Qualification database.²⁸

²⁵ See Qwest July 10, 2002 *ex parte* at 24-27. Covad also notes that the Colorado Commission states that the RLDT is satisfactory, based on the record before it. COPUC Reply Comments p. 22. Given the numerous examples of inaccuracy and Covad's claim that the RLDT is inaccurate and unreliable, *see* Covad Comments, pp. 19-20, it is difficult to see how the Colorado Commission could reach that conclusion.

²⁶ The entire listing of data points captured by an MLT can be found at http://www.qwest.com/wholesale/downloads/2002/020617/AppE_0617.doc

²⁷ CO Trans., 4/18/01 (Liston), pp. 249-252.

²⁸ Qwest July 10, 2002 *ex parte*, p. 26; *see also* Exhibit 5-Qwest-15, dated April 2, 2001, p. 44 (Rebuttal Affidavit of Jean M. Liston) (describing categories of information provided by the RLDT, including "MLT distance"), and Exhibit JML-6 attached thereto; CO Trans., 4/18/01 (Liston), pp. 215-216 and 257-258; SGAT § 9.2.2.8.2.

Qwest does not dispute that it ran the MLT and that it only populated the RLDT with loop length distance and not all the other data produced by the MLT tests.²⁹ CLECs also know that Qwest then hoarded the remaining information generated by the MLT tests, by referring it only to a “dedicated engineering team for manual handling” rather than using the information generated to correct any inaccuracies or update the information contained in the RLDT.³⁰ Ultimately, what CLECs do not know, and what Qwest has refused to disclose, is what this “dedicated team” did with the remaining in excess of one hundred data points that presumably are updated on a monthly basis. It strains credulity that Qwest would simply discard the information that would permit it to solicit every end user now qualified for xDSL service.

As detailed in Covad’s comments on these applications, the appropriate response to these defects in Qwest’s evidentiary showing is an immediate, comprehensive audit of Qwest’s OSS systems and processes.³¹ Qwest’s past behavior alone, namely permitting outside plant personnel to “update” loop makeup information through sales referrals directly to Qwest’s retail DSL division, demonstrates the need for such an audit.³² Auditing Qwest’s OSS is the only manner in which to ensure that Qwest meets its obligations to provide competitors with non-discriminatory access to the loop makeup information available to any of its personnel in both its retail and back office systems.

²⁹ *Id.*

³⁰ July 10, 2002 ex parte, p. 26.

³¹ See Covad comments at 16-18.

³² See 5-Qwest-15 (Liston Reb. Aff.), dated April 2, 2001, and Exhibit JML-14 attached thereto (last page shows method to update LFACS is to call MegaBit retail personnel); 5 Qwest 61 (last page shows “option” of providing a sales referral or a database update); see also CO Trans., May 23, 2001 (Liston), pp. 157-163.

Moreover, the audit should not be a one-time requirement. As part of a BOC applicant's public interest showing, the Commission generally examines the mechanisms in place to ensure future compliance with section 271 post-entry into the interLATA market. Here, there are no mechanisms in place designed to ensure, in the future, CLEC access to all loop qual information resident anywhere in Qwest. The only appropriate response to these defects in Qwest's application, namely the lack of any upfront assurance of parity access to all loop qual information, and the absence of any assurance after Qwest receives Section 271 relief that such access will continue to be provided, is the written requirement that Qwest permit CLECs to audit Qwest's loop qual databases as well as all other back office databases and records as necessary in order to ensure that CLECs have access to all of the loop qualification information available to Qwest personnel, in the same time and manner it is available to them.

Equally important, given that Qwest has failed its evidentiary burden, is the requirement that Qwest provide CLECs with a pre-order MLT. As Covad pointed out in its Comments, its concerns regarding the RLDT ultimately are driven by the fact that it generates inadequate, inaccurate and unreliable results.³³ The analysis upon which Covad relies was a result of the xDSL FOC trial. The FOC trial, which was designed primarily to determine whether Qwest could provide a reliable FOC (which it can't given that Qwest has provided statistically discriminatory service to Covad in the provision of multiple FOCs per order),³⁴ also included an analysis by Qwest and Covad of the

³³ See Covad Comments, pp. 18-24.

³⁴ Covad Comments, pp. 28-31.

information returned by the RLDT to Covad.³⁵ During the course of the two month trial (March-April 2002), Covad submitted for inclusion in the trial just under 1,000 orders. Of those orders, Covad provided over 150 examples of orders in which the RLDT returned inaccurate and unreliable data. Qwest questioned whether the information was actually unreliable on only 18 of the over 150 order examples provided by Covad. Qwest never even questioned the fact that the other 100+ orders did reflect inaccurate RLDT information. There is no dispute that the RLDT returns inaccurate and unreliable information.

There is a simple remedy to Qwest's inability or refusal to provide accurate and reliable loop qualification information or to provide CLECs with real time loop makeup information – an MLT test. The MLT test, which is a simple, straightforward test that can be remotely triggered and utilizes testing equipment already attached to the Qwest switches, will provide real-time loop makeup information – which Qwest conveniently has already provided to itself and apparently updates monthly.³⁶ Rather than some static, outdated and potentially inaccurate loop makeup information, the MLT allows the CLEC to see what the actual makeup of the loop is, which will actually allow it to determine whether an order should be placed.

The advantages that the pre-order MLT provides are not just one-way. Rather, Qwest also will benefit, in a very real manner, from pre-order CLEC access to MLT. Through a pre-order MLT, a CLEC will know definitively what the makeup of the loop

³⁵ Because of the way the trial progressed, there was no on-the-record discussion of the RLDT during the Colorado workshops on loops. Rather, on the record discussion was limited to whether Qwest could provide a meaningful FOC. However, the parties did brief the issue of the accuracy of the RLDT, and those briefs were filed by Qwest and Covad with the Colorado Commission on July 18, 2001.

³⁶ CO Trans., 4/18/01 (Liston), pp. 249-252.

is. If the information shows the loop cannot support xDSL service, then the CLEC will not submit that order. This will save Qwest money because it will not incur any administrative costs in creating a service order and flowing it through its system. Qwest will save additional money because it will not actually undertake any work, such as a truck roll or the dispatch of a CO technician to provision a loop because the order will not be placed. The mutual benefit that flows to both the ILEC and CLEC as a result of the MLT has been recognized by Verizon. Verizon provides access to MLT during the provisioning process and includes the results of the MLT when it sends the service order completion notice to the CLEC. Further, Verizon takes the results of the MLT and feeds that into its “LiveWire” database so that the loop qual information will be as up to date and accurate as possible.

Qwest’s evidentiary showing creates serious doubts about Qwest’s provision of non-discriminatory access to loop makeup information. In the case of Qwest’s loop provisioning practices, there is no doubt that Qwest’s practices exhibit obvious instances of discrimination. The best way to address the discriminatory processes inherent in Qwest’s provisioning is to order Qwest to (1) permit CLECs to audit all its databases and records containing loop qual information and (2) to provide pre-order MLT testing of line shared loops.³⁷

C. Qwest Provisioning and Repair of Line Shared Loops Is Out of Parity.

³⁷ Covad limits its MLT request to line shared loops. Because the testing equipment is already incorporated into the Qwest switch, MLT testing of line shared loops creates negligible administrative burden for Qwest.

As detailed in Covad's Comments, Covad has a number of concerns regarding Qwest's provisioning and repair of line shared loops.³⁸ On the provisioning side, Qwest sends a service order completion notice ("SOC") on the due date contained in the FOC rather than when it actually completes the work. That means that, regardless of whether Qwest completes its central office work well or even at all, a SOC is sent on the due date (e.g., the FOC date) provided earlier by Qwest to Covad. The operational problems as well as the resultant question as to the reliability of Qwest's reported performance data for line shared loops are set forth in Covad's Comments.³⁹ On the repair side, Covad pointed out that Qwest's M&R performance for line shared loops is abysmal and creates a significant barrier to meaningful competition by Covad.⁴⁰

Qwest indicated in its July 12, 2002 *ex parte* that it has attempted to resolve, as of July 1, 2002, both the operational and performance based issues created by the fake SOC. Unfortunately, the data does not bear out Qwest's claim. As Covad's own data shows,⁴¹ 60% of the trouble tickets it opened with Qwest from April 1, 2002 to date are due to missing or incomplete cross-connects in the central office. Stated as a straight

³⁸ Covad is dumbfounded by the Colorado Commission's claim that Covad has not raised its concerns regarding Qwest's line sharing performance previously. CO PUC Reply Comments, p. 21. The performance-based line sharing provisioning issues (poor or missing cross-connects) were raised repeatedly in workshop 3 on emerging services. Qwest represented that training would resolve these issues and that such training would be implemented. On that basis, the issues were closed. Of course, as Covad now knows, and which Qwest never disclosed, was the fact that these problems would continue because of its pattern and practice of sending fake SOC's to Covad, which information was only disclosed at the very end of May 2002. Further, CLECs specifically raised Qwest's poor performance in the maintenance and repair of line shared loops during the second technical conference on performance data. CO Trans., 2/5/02 (Finnegan), pp. 167-169; CO Trans., 2/5/02 (Doberneck), pp. 196-198. The questionability of Qwest's performance in the M&R of line shared loops was included in numerous of Covad's pleadings on commercial performance.

³⁹ Covad Comments, pp. 25-28.

⁴⁰ Covad Comments, pp. 31-34.

⁴¹ All percentages provided are Colorado specific.

percentage, in the month of April, Covad had to open trouble tickets on 14% of its Colorado line shared loops delivered due to missing or incomplete cross-connects in the central office. In May, Covad had to open TTs on 16% of the line shared loops delivered due to missing or incomplete cross-connects. In June, the percentage again was 16%, and in July (month to date) it remained an abysmal 11%.⁴²

It is clear that the new Qwest process, while potentially resolving some of the issues due to transmission of a fake SOC, has not resolved all of the problems created when Qwest sends a SOC to Covad on a line shared loop without ensuring that the work was properly done. Under Qwest's new job aid, the CO technician is supposed to place the order in jeopardy status if a problem is found on the line. Presumably, the jeopardy process would prevent the fake SOC from being issued, until and unless the line could be provisioned. What Qwest fails to explain is why a jeopardy would ever be issued where the CO technician performs a poor loop installation, resulting in a missing or bad cross-connection. In fact, in such a scenario, a jeopardy notice would never be placed on the order (assuming, naturally, that the CO technician is not knowingly providing a poor cross-connection). Instead, the CLEC (and the CLEC's customer) would be left to discover that the line simply did not work, in spite of the issuance of a SOC, when turning up the end user's service.

Qwest's new job aid suffers from other specific defects. First of all, Qwest has not explained what steps it has taken to make sure that its central office technicians will

⁴² An argument advanced by Qwest in which it relies upon OP-5 to show that the quality of its provisioning performance is adequate should be disregarded. Qwest has freely admitted that it cannot produce the data underlying OP-5. If Qwest cannot even produce the data building blocks that permit it to report on OP-5, then it has failed to meet its evidentiary burden of showing that its performance data is accurate and reliable. In light of that failure of burden of proof, any Qwest argument grounded in OP-5 must be rejected as without foundation or basis.

make complete use of its job aids. Making the job aid merely available to its technicians is insufficient. Qwest must make sure that its loop provisioning process entails the use of its job aid, and that technicians thoroughly follow through on each step. Second, Qwest's job aid suffers from the additional defect that, when problems are discovered in the line being provisioned, the central office technician is directed merely to jumper around the splitter and place the order in jeopardy status. The job aid contains no instructions directing the technician to engage in any sort of troubleshooting on the high-frequency portion of the line, unlike the voice portion.⁴³

Importantly, Qwest requires the use of different and more complex processes for the installation of CLEC line shared loops than it does for itself. Covad has repeatedly requested that Qwest provide a router test for end-to-end data continuity as part of its provisioning process for line shared loops, yet Qwest has refused. Now, Qwest has decided that it will use a router test for the loops in its own retail line shared service, using the same type of router and CPE equipment that Covad uses, but continues to refuse providing Covad with such a test, even in face of poor performance on line shared loops.⁴⁴

At the end of the day, the problems Qwest has created for itself on both the provisioning and repair of line shared loops can be resolved through use of a router test. By requiring Qwest to provide router test capabilities to CLECs, the Commission ensures that the provisioning process and associated testing undertaken to ensure that a good line shared loop is delivered (that is, a loop with circuit continuity) is at parity between Qwest

⁴³ See Qwest July 12 ex parte at 4 ("Step 5"). The job aid does direct the CO technician to troubleshoot failures in the voice portion of the circuit. Qwest does not explain why it fails to provide similar direction for the high-frequency portion of the loop being provisioned to CLECs.

and CLECs. Simply put, use of the same router test that Qwest utilizes for its own line shared loops will ensure that the Qwest technician will undertake the same testing and provisioning steps for CLEC line shared loops, which should facilitate a significant improvement in Qwest's provisioning performance. Second, use of the router test will resolve the operational issues created by Qwest through poor provisioning performance. That is, the router test will detect and permit the correction of poor or missing cross-connects prior to line shared loop delivery by Qwest, rather than at some point after loop delivery and the end user customer has formed a poor impression of Covad. Third, the router test will ensure that the SOC sent by Qwest to CLECs is reliable. In other words, if the SOC is triggered by the running of the router test (which is an automatic step on the provisioning side for Qwest's retail line shared loops), then a CLEC can rest assured that all work has been completed properly since the SOC is triggered by actual work completion rather than the arrival of a due date. Finally, by resolving on the provisioning side any problems associated with a particular loop, far fewer trouble tickets will be opened by CLECs which will improve Qwest's currently poor and out of parity M&R performance for line shared loops,⁴⁵ and will decrease the costs incurred on the M&R side to correct provisioning problems.

D. KPMG Findings of Human Error

As KPMG's findings illustrate, Qwest's OSS processes for CLECs are replete with human error.⁴⁶ Qwest urges the Commission to ignore KPMG's finding of

⁴⁴ See Covad comments at 23 and fn. 33.

⁴⁵ Covad Comments, p. 31-34.

⁴⁶ See Covad Comments at 32, 39-42.

approximately a 15% rate of human error in Qwest's OSS systems and processes, directing the Commission's attention to Liberty's aggregate results finding a 6% rate of human error in UNE loop orders.⁴⁷ As an initial matter, the Commission should recognize that neither of these two numbers, 6% vs. 15%, is an acceptable rate of human error in Qwest's OSS systems and processes for CLECs. That aside, the Commission should reject Qwest's characterization of Liberty's data reconciliation as a more reliable indicator of the rate of human error than KPMG's findings.

KPMG's opinions and findings should be given greater weight for a number of reasons. KPMG was fully familiar with the data maintained and produced by both the P-CLEC and Qwest. Liberty, while familiar with the Qwest documentation, did not have any understanding of CLEC data or even of Covad's business prior to the reconciliation. For instance, Covad's primary contact at Liberty did not understand what line sharing is or what Covad ordered when it ordered a line shared loop. Furthermore, Liberty ignored many significant issues raised by Covad during the data reconciliation. For instance, Covad raised the issue of whether Qwest was correctly reporting PO-5, measuring FOC intervals. Disconnect orders are supposed to receive FOCs in 24 hours, yet the SIG and the Qwest "InfoBuddy" stated the interval for disconnects was three days. With respect to the PO-5 measure, Liberty also discounted Covad's calculation of the PO-5 interval where there was no LSRC from Qwest supporting Covad's calculation. The problem with Liberty's approach is that, for orders placed via the GUI as opposed to via EDI, an LSRC is never returned. Covad also raised the issue that LSRs were being rejected improperly, not because they were inaccurate or incomplete, but because there was a

⁴⁷ See Qwest July 10 ex parte at 14-22.

pending order to add a voice service. Covad indicated to Liberty that this was not an acceptable basis for LSR rejection under the PIDs, yet Liberty never responded to Covad's objection. Liberty, while using the SOC to measure loop delivery, never uncovered the fact that the SOC was being triggered by the FOC date and not by any work events. Finally, Liberty failed to confirm the efficacy of Qwest's proposed corrections to human error issues raised by Liberty's reconciliation effort.

Because of the manifold deficiencies in the Liberty data reconciliation, the Commission should grant greater weight to KPMG's findings on human error issues than the Liberty data reconciliation. In addition, the Commission should reject any characterization that the PO-20 measure serves as a check against human error in Qwest's systems and processes.⁴⁸ PO-20 does not address all of the issues identified by KPMG in its PID adequacy study, nor does it even begin to address the problem of human intervention and error for many of the UNE loop products ordered by Covad. More importantly, Qwest thus far has refused to meaningfully commit to including PO-20 into the CPAP, rendering PO-20 a paper tiger.⁴⁹

E. New Build/Held Order Policy

Qwest's ex parte represents that it will include language implementing its 30 day held order process in the updated SGATs it will file throughout its service territory.⁵⁰ While the inclusion of contract language is of some comfort, any such comfort is small. Qwest's held order policy continues to improperly improve its PID performance without

⁴⁸ See Qwest July 10 ex parte at 23.

⁴⁹ Furthermore, as detailed in Covad's comments, Qwest's most recent proposal for inclusion of this measure in the CPAP is wholly inadequate. See Covad Comments at 41 and fn. 42.

⁵⁰ See Qwest ex parte at 35.

any corresponding improvement in its actual performance. In fact, because CLEC orders going into the “held” status are never provided a due date or a FOC, Qwest automatically positions itself to meet its OP-3 and OP-4 targets since due dates are only provided when, and by when, Qwest knows it is capable of filling a CLEC order. Furthermore, the current incarnation of Qwest’s held order policy simply serves to mask Qwest’s poor performance in meeting CLEC demand for UNEs under the OP-6 and OP-15 metrics.⁵¹ That is, orders that are held under the policy never show up, and therefore there will be no reported performance showing that Qwest is snuffing out competitors simply by refusing to fill their orders. Qwest’s held order policy thus allows it to demonstrate that it is meeting checklist compliance by excluding from its performance measures those orders that show it is not.⁵²

Qwest suggests that it actually is reporting all orders being held due to a lack of facilities, but it is not. For example, in May (the most recent month available for the Covad-specific PID reports), Qwest reported only 2 orders being held due to a lack of facilities for unbundled (as opposed to line shared) loops. Yet, in the weekly listing of orders going into held status that Qwest’s Held Order Group provides to Covad, Qwest reported that ten orders were in held status the week of May 6, 2002; fourteen orders were in held status the week of May 13; nine orders were in held status the week of May

⁵¹ See Covad Comments at 37.

⁵² Neither Qwest nor the Colorado Commission, in its Reply Comments, even attempt to address the fact that Qwest’s held order policy permits it to report better performance than what is being experienced by CLECs in reality.

20, and another fourteen orders were in held status for the week ending June 3.⁵³ Thus, it is clear that Qwest is not reporting all orders that go into held status.

Qwest should be ordered to revise its held order policy in order to permit the Commission to accurately review and determine whether Qwest is providing unbundled loops consistent with CLEC demand. First, Qwest must be required to report on the number of orders held due to a lack of facilities and the duration of the hold (OP-15), and delays due to lack of facilities (OP-6), regardless of whether those orders are ever completed (i.e., measure all orders that go held due to a lack of facilities, regardless of whether the orders are completed, cancelled or rejected). Second, Qwest must also be required to report its performance on orders that are held but later filled, measuring that interval from the time the order is first submitted by the CLEC until the order is filled by Qwest (OP-3 and OP-4).

⁵³ Typically, Qwest provides the held order listing on a weekly basis. For May 2002, Qwest did not provide a listing for the last full week, presumably due to the Memorial Day holiday. Because of that, Covad listed the orders held in the week ending June 3.

CONCLUSION

In spite of its recent submissions, Qwest's applications for 271 authorization in this docket fail to meet the requisite burden for demonstrating compliance with the requirements of the Act and the Commission's implementing rules. Unless and until Qwest carries this burden, its applications in this docket should be denied.

Respectfully submitted,

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